

ATTACHMENT

WORKFORCE INVESTMENT ACT LANGUAGE PERTAINING TO SANCTIONS

TITLE I

Section 136

(g) Sanctions for State Failure To Meet State Performance Measures.

(1) States.

(A) Technical assistance. If a State fails to meet State adjusted levels of performance relating to indicators described in subparagraph (A) or (B) of subsection (b)(2) for a program for any program year, the Secretary shall, upon request, provide technical assistance in accordance with section 170, including assistance in the development of a performance improvement plan.

(B) Reduction in amount of grant.-- If such failure continues for a second consecutive year, or if a State fails to submit a report under subsection (d) for any program year, the Secretary may reduce by not more than 5 percent, the amount of the grant that would (in the absence of this paragraph) be payable to the State under such program for the immediately succeeding program year. Such penalty shall be based on the degree of failure to meet State adjusted levels of performance.

(2) Funds resulting from reduced allotments. The Secretary shall use an amount retained, as a result of a reduction in an allotment to a State made under paragraph (1)(B), to provide incentive grants under section 503.

FINAL RULES

Preamble (Part 666, Subpart B)

2. Sanctions: Section 666.240 explains that States failing to meet for any program adjusted levels of performance for core indicators and the customer satisfaction indicators for any program, in any year, will receive technical assistance, if requested. If a State fails to meet the required indicators for the same program for a second consecutive year, the State may receive a reduction of as much as five percent of the succeeding year's grant allocation.

We received several comments suggesting that the limited experience in using wage records to measure performance, plus the energy and resources being focused on the creation of new partnerships and the establishment of new customer-focused, streamlined service designs, may have a negative impact on performance, possibly

exposing States to sanctions. The comments proposed delaying the application of sanctions until baseline data could be developed, and States would be better prepared to negotiate realistic levels of performance against which they would be measured.

Response: We recognize that the changes being undertaken with the implementation of WIA should ultimately lead to higher performance and a more sophisticated and accurate performance measurement system. Nonetheless, as a result of consultation with partners and stakeholders, we have clarified the process for determining acceptable and unacceptable performance by establishing a range so that a State's performance will be deemed to be acceptable if the actual performance falls within 20 percent of the negotiated level. Therefore, sanctions will not be considered unless actual performance is more than 20 percent below the negotiated level. This rule has been included as a new provision at Sec. 666.240(d).

Part 666, Subpart B, Sec. 666.240

Under what circumstances may a sanction be applied to a State that fails to achieve negotiated levels of performance for title I?

(a) If a State fails to meet the negotiated levels of performance agreed to under Sec. 666.120 for core indicators of performance or customer satisfaction indicators for the adult, dislocated worker or youth programs under title I of WIA, the Secretary must, upon request, provide technical assistance, as authorized under WIA sections 136(g) and 170.

(b) If a State fails to meet the negotiated levels of performance for core indicators of performance or customer satisfaction indicators for the same program in two successive years, the amount of the succeeding year's allocation for the applicable program may be reduced by up to five percent.

(c) The exact amount of any allocation reduction will be based upon the degree of failure to meet the negotiated levels of performance for core indicators. In making a

determination of the amount, if any, of such a sanction, we may consider factors such as:

- (1) The State's performance relative to other States;
 - (2) Improvement efforts underway;
 - (3) Incremental improvement on the performance measures;
 - (4) Technical assistance previously provided;
 - (5) Changes in economic conditions and program design;
 - (6) The characteristics of participants served compared to the participant characteristics described in the State Plan; and
 - (7) Performance on other core indicators of performance and customer satisfaction indicators for that program. (WIA sec. 136(g).
- (d) Only performance that is less than 80 percent of the negotiated levels will be deemed to be a failure to achieve negotiated levels of performance.
- (e) In accordance with 20 CFR 667.300(e), a State grant may be reduced for failure to submit an annual performance progress report.
- (f) A State may request review of a sanction we impose in accordance with the provisions of 20 CFR 667.800.

Part 667, Subpart C, Sec. 667.300

What are the reporting requirements for Workforce Investment Act programs?

(e) Annual performance progress report. An annual performance progress report for each of the three programs under title I, subpart B is required by WIA section 136(d).

(1) A State failing to submit any of these annual performance progress reports within 45 days of the due date may have its grant (for that program or all title I, subpart B programs) for the succeeding year reduced by as much as five percent, as provided by WIA section 136(g)(1)(B).

(2) States submitting annual performance progress reports that cannot be validated or verified as accurately counting and reporting activities in accordance with the reporting instructions, may be treated as failing to submit annual reports, and be subject to sanction. Sanctions related to State performance or failure to submit these reports timely cannot result in a total grant reduction of more than five percent. Any sanction would be in addition to having to repay the amount of any incentive funds granted based on the invalid report.

Part 667, Subpart H, Sec. 667.800

What actions of the Department may be appealed to the Office of Administrative Law Judges?

(a) An applicant for financial assistance under title I of WIA which is dissatisfied because we have issued a determination not to award financial assistance, in whole or in part, to such applicant; or a recipient, subrecipient, or a vendor against which the Grant Officer has directly imposed a sanction or corrective action, including a sanction against a State under 20 CFR part 666, may appeal to the U.S. Department of Labor, Office of Administrative Law Judges (OALJ) within 21 days of receipt of the final determination.

(b) Failure to request a hearing within 21 days of receipt of the final determination constitutes a waiver of the right to a hearing.

(c) A request for a hearing under this subpart must state specifically those issues in the final determination upon which review is requested. Those provisions of the final determination not specified for review, or the entire final determination when no hearing has been requested within the 21 days, are considered resolved and not subject to further review. Only alleged violations of the Act, its regulations, grant or other agreement under the Act fairly raised in the determination, and the request for hearing are subject to review.

(d) A request for a hearing must be transmitted by certified mail, return receipt requested, to the Chief Administrative Law Judge, U.S. Department of Labor, Suite 400, 800 K Street, NW., Washington, DC 20001, with one copy to the Departmental official who issued the determination.

(e) The procedures in this subpart apply in the case of a complainant who has not had a dispute adjudicated under the alternative dispute resolution process set forth in Sec. 667.840 within the 60 days, except that the request for hearing before the OALJ must be filed within 15 days of the conclusion of the 60-day period provided in Sec. 667.840. In addition to including the final determination upon which review is requested, the complainant must include a copy of any Stipulation of Facts and a brief summary of proceedings.

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Section 5. Incentives and Sanctions Policies**E. Failing to Meet the Negotiated Levels**

Negotiated levels will be established for each of the 17 performance measures. The lowest acceptable level (lower limit) will be calculated as 80% of the established State negotiated level. States must attain 80% of the target performance level on each measure for performance to be determined acceptable. If a State falls below this threshold of 80% on any of the performance measures, the State may be subject to sanction. Although WIA and this guidance provide some specific requirements for sanctions, the Department will review possible sanctions on a case by case basis.

G. Unacceptable Performance in Two Consecutive Years

If performance is unacceptable for two consecutive years on the same performance indicator, monetary sanctions may be imposed.

H. Amount of Monetary Sanctions

Sanctions will be determined on a case by case basis, and may range from 1% up to a maximum 5% reduction.